

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



April 12, 2001

TO: PARTIES OF RECORD IN INVESTIGATION 00-12-029
DECISION 01-04-015, MAILED APRIL 12, 2001

On March 12, 2001, a Presiding Officer's Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 8.2 of the Commission's Rules of Practice and Procedures provide that the Presiding Officer's Decision becomes the decision of the Commission 30 days after its mailing unless an appeal to the Commission or a request for review has been filed.

No timely appeals to the Commission or requests for review have been filed. Therefore, the Presiding Officer's Decision is now the decision of the Commission.

The decision number is shown above.

/s/ LYNN T. CAREW BY PSW

Lynn T. Carew, Chief
Administrative Law Judge

LTC:hkr

Attachment

Decision 01-04-015 April 12, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operation and practices of Guillermo Navarro and David Navarro, partners doing business as Happy Tours (TCP 12171 A), to determine whether they have violated the laws, rules and regulations governing the manner in which charter-party carriers conduct operations, and whether they possess reasonable fitness to continue to conduct passenger transportation service.

Investigation 00-12-029
(Filed December 21, 2000)

Ronald Jay Brahms, for Guillermo Navarro, respondent.
Travis Foss, Attorney at Law, Enedina Lopez, and Officer
Richard Brown (CHP), for Consumer Services Division.

O P I N I O N

Summary

In this decision we find that respondents have consistently failed to maintain their vehicles in safe operating condition as required by California law and regulations; consequently, we revoke respondents' operating authority.

Background

On December 21, 2000, the Commission issued Order Instituting Investigation 00-12-029 (OII) into the operation and practices of Guillermo Navarro and David Navarro, dba Happy Tours (respondents). In the OII, the Commission ordered respondents to immediately cease any charter-

party operations. The Commission also directed that a hearing be set near San Diego within 10 business days of personal service of the order upon respondents. Respondents were served on December 28, 2000. The assigned Administrative Law Judge (ALJ) held an evidentiary hearing on January 12, 2001. The purpose of the hearing was limited to allow the respondents to present evidence and legal argument to support vacating or modifying the immediate suspension ordered in the OII. Commission staff was directed to present competent evidence demonstrating specific facts as to why the suspension order should remain in effect while this proceeding is pending.

At the hearing, respondent Guillermo Navarro appeared and was represented by counsel. The Commission's Consumer Services Division (CSD), along with a representative of the California Highway Patrol (CHP), also appeared and was represented by counsel.

By ruling, the assigned ALJ specified that after the limited hearing on the issue of vacating or modifying the interim suspension order, a prehearing conference would be held to set the schedule for the remainder of the proceeding. However, at the conclusion of the limited hearing, the parties waived their rights to any further hearings or briefs and the case was submitted for decision by the Commission on the merits.

Positions of the Parties

As set out below, CHP records show that respondents operated a carrier service from 1994 to 1997 without Commission authorization, and incurring numerous safety violations. In 1997, respondents' service fleet consisted of one van, which passed CHP inspection. Based on that inspection, the Commission granted respondents operating authority.

The fleet subsequently grew to four vehicles and safety violations resumed.

Mr. Navarro has recently reduced his fleet to a single van, which he believes he can operate safely.

1. CSD

CSD presented the investigative report of Enedina K. Lopez, along with 68 attachments. The report showed the Commission issued certificate TCP 12171-A to Guillermo Navarro and David Navarro, dba Happy Tours, on November 9, 1998. The report concluded that respondents had violated General Order (GO) 157-C by failing to comply with safety provisions of Title 13 of the California Code of Regulations. The safety violations, which were observed and recorded by CHP, are detailed below. In addition to the safety violations, the records reviewed by investigator Lopez showed that the carrier had:

- Numerous record-keeping inconsistencies over a long period of time, such as one driver being recorded as driving more than one vehicle at the same time of day, different drivers being recorded as the departing and arriving driver.
- Engaged a driver with an expired driver's license, and one without a commercial driver's license.
- Failed to enroll all drivers in the DMV pull notice program and the drug testing program.
- Failed to have evidence of workers' compensation insurance.

CSD also presented CHP Officer Richard Brown to testify on this carrier's history of safety inspections. Officer Brown stated that he and his CHP colleagues had conducted inspections of this carrier's vehicles on several occasions from 1994 to the present. Based on the violations found during these inspections, Officer Brown concluded that this carrier

represented an imminent safety risk to the public. The most notable safety violations found by CHP are listed below:

- October 20, 1994, New Bus Carrier inspection, brakes out of adjustment, low air warning device inoperative.
- January 9, 1995, fuel hose leaking at rear of engine, seats not bolted to floor, exhaust fumes leaking into passenger compartment, brake chamber leaking air.
- April 11, 1995, defective tire with bubble in inner sidewall, brakes severely out of adjustment.
- July 13, 1995, worn hose to air brake, cord exposed, bulge when air applied, fuel tank leaking.
- October 23, 1995, exhaust leaking into passenger compartment, loose air brake chambers.
- March 12, 1996, fuel tank leaking, crimped brake air line tube, exhaust fumes leaking into passenger compartment.
- July 16, 1996, brake chamber very loose, air tanks with excessive oil.

The CHP inspection reports included the following conclusions:

Carrier is being rated unsatisfactory for the 6th consecutive time. . . . This carrier continues to demonstrate the lack of desire and/or the inability to obtain even a minimum of satisfactory compliance with the laws and regulations governing the operation of a tour bus especially with the maintenance of his bus. Numerous obvious mechanical defects were noted during this inspection. Carrier's safety inspection records are deemed to be "paper" inspections as they show only a few minor defects. Carrier continues to operate as an interstate tour bus operator even after repeated verbal and written direction to cease operating until he registers with the California PUC and attains valid operating authority from the US DOT/FHWA as required. This continued operation without possessing valid operating authority is flagrant and further demonstrates this carrier's lack of commitment to comply. The continued operation of a bus with several known mechanical defects constitutes an imminent danger to the public safety.

Guillermo Navarro, Safety Compliance Report, Department of California Highway Patrol, July 17, 1996.

Mr. Navarro subsequently applied to the Commission for operating authority. On July 6, 1997, in response to a Commission request, the CHP performed an inspection of Mr. Navarro's vehicle. At that time, Mr. Navarro was operating only one 15-passenger van. During the inspection, CHP noted several record-keeping and minor repair deficiencies. As a result, Mr. Navarro was given a conditional rating, which required that he correct the deficiencies within six months. After the follow-up inspection on December 5, 1997, the CHP issued Mr. Navarro a satisfactory rating.

On November 9, 1998, this Commission issued Mr. Navarro, in partnership with his son, David Navarro, TCP 12171-A, charter party operating authority.

CHP's next inspection occurred on June 11, 1999, when Mr. Navarro acquired a 48-passenger bus. This inspection noted several mechanical defects, e.g., cracked windshield, bald tires, all of which CHP required to be repaired prior to putting the bus into service.

On September 13, 1999, CHP conducted its annual inspection for rating of Mr. Navarro's operations. At that time, he was operating four buses with five drivers. The inspection revealed each of the four buses had significant mechanical defects, for example, brake linings thin and rotors grooved, cracked windshield, brake-warning light inoperative. Most seriously, one of the buses used liquid propane gas as a fuel, and a hose on this bus had been replaced with a household appliance quality hose, which was inadequate for vehicle operation conditions. These violations were in addition to numerous record-keeping and driver certification violations.

As a result of the inspection, Mr. Navarro was assigned an unsatisfactory rating.

At the follow-up inspection in December 1999, most of the violations had not been remedied, leading the CHP officer to conclude:

Carrier's preventative maintenance program is not adequate to ensure that vehicles are kept in safe and proper operating condition. Many of the violations noted during this CHP inspection were also noted on CHP inspection dated 9-13-99.

* * *

As a result of this reinspection and PUC fitness evaluation, a second consecutive unsatisfactory safety compliance rating is assigned. Approval for PUC operating authority is recommended "denied" based on . . . carrier's consistent non-compliance with safety rated matters, . . . vehicle violations of a deliberate or long-standing nature, . . . violations generally spread over all vehicles which by their nature should have been detected and corrected under an acceptable inspection/maintenance program, . . . maintenance record entries not consistent with vehicle condition.

Happy Tours, Safety Compliance Report/Terminal Record Update, December 8, 1999.

On March 8, 2000, CHP began another inspection of Mr. Navarro's operations. This inspection was completed on May 19, 2000. This inspection included review of records kept by Mr. Navarro for internal consistency as well as comparing his records with those of the casino that was his destination. As a result of these record inspections, CHP concluded that Mr. Navarro's records showed repeated hours of operation violations. (Drivers are limited in the number of consecutive hours they may drive.) The records also showed drivers being simultaneously off duty as well as on. Comparing Mr. Navarro's records to the casino's

records showed that Mr. Navarro's records reflected different drivers from those recorded at the casino. The report concluded that due to this third consecutive unsatisfactory rating, the CHP would recommend that the Commission revoke or suspend Mr. Navarro's operating authority for willfully providing false time records and consistently failing required safety inspections.

Subsequent to this report, Mr. Navarro met with supervisory personnel at CHP and arrived at an agreement whereby Mr. Navarro would sell his larger buses and operate only with two vans. Mr. Navarro complied. On August 9, 2000, the CHP officers inspected the two vans and gave Mr. Navarro a "conditional" rating, and he resumed operations with only the two vans.

On December 7, 2000, however, CHP's on-highway inspection program officers inspected Mr. Navarro's van and found a serious defect in the steering mechanism. These officers issued a ticket to Mr. Navarro directing that the defect be fixed, and it was.

On December 21, 2000, the Commission issued this OII, which ordered Mr. Navarro to cease operations pending completion of this investigation.

The final inspection for both vans occurred on January 9, 2001. At that time, one van passed the inspection and the other did not. The report noted that the van that did not pass the inspection had a "for sale" sign in the window.

2. Guillermo Navarro

Mr. Navarro testified, as did his daughter, Angelina Garcia. Mr. Navarro explained that he has a preventive maintenance program pursuant to which he inspects his vehicles, notes any defects, and makes

any needed repairs. He stated that he retains all receipts and can document his efforts. Mr. Navarro also explained that he uses his vehicles every day and that it is impossible to maintain a vehicle in perfect condition when it is being used daily, and that is why the CHP inspectors always find something wrong.

Mr. Navarro also testified that his driver records should not be directly compared to the casino's records because the drivers often sign for each other at the casino. For this reason, he stated, the casino's records are not reliable.

Mr. Navarro testified that he recognized that he had made errors in his past operations but he emphasized that at no time did he purposely break the law. He explained that he simply did not know what was necessary, or he assumed that his vehicles were okay. He pointed out that his conduct has improved significantly over the years, and that he felt he could operate one van with no employees in full compliance with the laws and regulations. Mr. Navarro concluded by stating that he is simply trying to support his family by operating this business.

Ms. Garcia testified that she assisted her father with record-keeping and overall paperwork for the business. She testified that in the early years of the business there had been some problems but that they have learned from their mistakes, and that they are now in compliance with the record-keeping regulations.

Discussion

Pursuant to GO 157-C, all charter-party carriers of passengers, including Mr. Navarro, must comply with the requirements of the California Highway Patrol and the Motor Carrier Safety Sections of Title 13 of the California Code of Regulations.

The Commission may revoke a carrier's operating authority if the carrier fails to provide reasonable service. Such failure is defined in Pub. Util. Code § 5378(a)(7)¹ as including repeated violations of the Vehicle Code or regulations contained in Title 13 of the California Code of Regulations.

In addition, under § 5378(a)(8), the Commission may also revoke a carrier's operating authority for:

Consistent failure of the charter-party carrier of passengers to maintain its vehicles in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety, as shown by the records of the commission, the Department of Motor Vehicles, the Department of the California Highway Patrol, or the carrier.

CSD has presented us with copies of detailed reports from the CHP. These reports document a series of serious violations of safety requirements. These reports led the CHP to conclude that at one time this carrier represented an imminent danger to public safety.

Respondents have not challenged CHP's records. Respondents contend, however, that they have learned from their past mistakes and are now capable of offering safe service to the public, albeit on a limited scale of one van. While we are sympathetic with the desire of respondents to support their family, operating as a charter-party carrier necessarily requires strict compliance with safety regulations. The history of this

¹ All citations are to the Public Utilities Code unless otherwise noted.

carrier demonstrates an inability or unwillingness to protect passengers and the traveling public from serious safety breaches.

Therefore, we find that the CHP reports, both before and after our certification of this carrier, show a consistent failure of respondents to maintain their vehicles in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations. Having found such a failure, and pursuant to § 5378, we revoke TCP 12171 A issued to Guillermo Navarro and David Navarro, dba Happy Tours.

Findings of Fact

1. The Commission issued TCP-12171-A to Guillermo Navarro and David Navarro, dba Happy Tours, on November 9, 1998.
2. In I.00-12-029, the Commission ordered respondents to cease operating while this proceeding was pending.
3. On January 12, 2001, the assigned Administrative Law Judge (ALJ) convened a hearing on the interim order to cease operating. At the hearing, respondents were present and represented by counsel. Through counsel, respondents cross examined CSD's witness, a CHP officer. At the conclusion of the hearing, the parties waived their rights to further proceedings, and asked that the record be closed and the case submitted for decision by the Commission.
4. The records of CHP show that from 1994 to the present respondents have been cited numerous times for safety violations of the California Vehicle Code and Title 13 of the California Code of Regulations. These violations have included leaking fuel lines, belt-exposed tires, and

unreliable brakes. On six occasions, CHP issued unsatisfactory safety ratings to respondents.

5. The records of CHP show a consistent failure of this carrier of passengers to maintain its vehicles in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

6. Respondents have not shown that they are capable of operating as a carrier in full compliance with all applicable safety laws and regulations.

Conclusions of Law

1. Pursuant to § 5378, this Commission may revoke a carrier's operating authority where the carrier has demonstrated consistent failure to maintain its vehicles in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

2. Respondent's operating authority should be revoked, effective immediately.

O R D E R

Therefore, **IT IS ORDERED** that:

1. The operating authority granted to Guillermo Navarro and David Navarro, dba Happy Tours (TCP 12171-A), is hereby revoked.
2. Respondents shall permanently cease all charter-party carrier operations.
3. This proceeding is closed.

This order is effective today.

Dated April 12, 2001, at San Francisco, California.